

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 26 July 2005

CASE NOs: 2005-TSC-00001; 2005-ERA-15

In the Matter of:

Maurice Rosen,
Complainant,

v.

Fluor Hanford, Inc.,
Respondent.

Appearances:

Michael B. Saunders, Esq., Halvorson & Saunders, P.L.L.C
for Respondent

Thad M. Guyer, Esq., Government Accountability Project
for Complainant

Order on Video Recording of Depositions

Respondent Fluor Hanford, Inc. (FHI) filed a Motion for a Protective Order after counsel for Complainant, Maurice Rosen (Rosen), proposed to record several depositions both by audiovisual¹ means and by court stenographer. The reporter's stenographic notes could be transcribed if necessary, but copies of the audiovisual media would be available to both parties without incurring a transcription expense. Rosen's counsel would retain the original audiovisual media.

FHI argued that the audiovisual recordings proposed in the notices of deposition were unauthorized by 29 CFR Parts 18.1 *et seq.*, failed to meet the standards for nonstenographic deposition recording in Rules 28 and 30, Fed. R. Civ. P., and in the alternative, that if such recordings were permitted, their dissemination should be strictly limited. Rosen filed a partial opposition to the motion, contending that the Federal Rules of Civil Procedure permit lawyer

¹ The motion refers to video recording, but apparently the camera records audio as well.

videographers, but stipulating that only the parties, counsel and their employees, the court reporter, the Department of Labor, and officials at the Department of Energy should have access to the audiovisual media.

I find that:

1. The parties agreed on the scheduling of (1) Rosen's depositions of FHI's managerial or non-managerial employees James Hanna, Dorman Blankenship, Cheryle Brasker, Art Garcia, Heather Guillen, Marilyn Strankman, and Frank Blowe, and (2) FHI's deposition of Mr. Rosen.
2. Discovery depositions under the provisions of 29 CFR Parts 18.1 *et seq.* may be taken by means of non-stenographic audiovisual recording pursuant to Rule 30(b)(2), Fed. R. Civ. P. and Local Rule 32.1 of the U. S. District Court for the Eastern District of Washington.

It is ordered that:

1. The depositions may be recorded by audiovisual media following the procedures set out in Rule 30(b)(2) and (4), Fed. R. Civ. P. and Local Rule 32.1 of the Eastern District of Washington.
2. Either Thad Guyer or Stephani Ayers, whichever attorney is not conducting the deposition examination, will operate Complainant's video camera recording the deposition(s). As the video media operator, he or she must state on camera at the beginning of each recorded deposition (a) his or her name and address, (b) their organization's name and address, (c) the date, time and place of the deposition, (d) the caption of the case, (e) the name of the witness, and (f) the party on whose behalf the deposition is being taken. At the conclusion of the deposition, he or she shall state on camera that the deposition is concluded. When the length of the deposition requires the use of more than one media card (or its equivalent), the end of each media card and the beginning of each succeeding media card shall be announced on camera by the video camera operator, Mr. Guyer or Ms. Ayers.
3. Each deposition shall be timed by a digital clock on camera. The recording shall show each hour, minute and second the deposition on the recording media.
4. The attorney for the party video recording the deposition shall retain custody of and be responsible for safeguarding the recorded media; permit FHI to view the audiovisual recording and provide a copy of any or all depositions to FHI upon request, at no more than the actual cost of duplication.
5. The audiovisual recordings of the depositions shall be held confidential; access shall be limited to the attorneys of record, the staff of those attorneys under the attorneys' direct supervision and responsibility, the parties to this case, the United States Department of Labor in the adjudication of this case, and appropriate officials of the United States Department of Energy.

6. The audiovisual recordings of the depositions may be used to the same extent and in the same manner that transcripts of oral depositions may be used under Rule 32, Fed. R. Civ. P.

A

WILLIAM DORSEY
Administrative Law Judge